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8 Attorneys for Defendants:
9 THEODORE MOORE, BERKLEY BROWN
d/b/a UCLA DEPT. OF PEDIATRICS GRP
10 PRACTICE AND THE REGENTS OF THE
11 UNIVERSITY OF CALIFORNIA, UCLA LOS
ANGELES CHILDREN'S MATTEL

12 IN THE UNITED STATES DISTRICT COURT

13 DISTRICT OF NEVADA

14
15 SCOTT JOHNSON, CHRISTINE JOHNSON;
16 CHAD JOHNSON; CHRISTINE JOHNSON,
REPRESENTING DEREK BRYCE JOHNSON,
DECEASED,

17 Plaintiffs,

18 vs.

19 JONATHAN BERNSTEIN; ALAN IKEDA;
20 JENNIFER BUITRAGO-IKEDA; WENDY
DAHL; ANNETTE LOGAN; SAMUEL
21 ESPARZA; JEREMY LOGAN; MARY WARREN,
d/b/a CHILDREN'S SPECIALTY CENTER OF
22 NEVADA; JONATHAN BERNSTEIN, LTD.;
23 NDHINA NHLANE; LISA JOHNSON; FARAZ
NOROZIAN; CHARLES HUGHES; MARC
24 O'CONNOR; SUNRISE HOSPITAL AND
MEDICAL CENTER LLC; ST. ROSE
25 DOMINICAN HOSPITAL SIENA CAMPUS d/b/a
26 CATHOLIC HEALTHCARE WEST; MICHAEL
SCHEIDLER, ROBERT KNOBLOCK OF
27 LABORATORY MEDICAL CONSULTANTS,
LTD; THEODORE MOORE, BERKLEY BROWN
28 d/b/a UCLA DEPT. OF PEDIATRICS GRP

CASE NO. 2:13-cv-00641-MMD-NJK

1 PRACTICE and The REGENTS OF THE
2 UNIVERSITY OF CALIFORNIA, UCLA LOS
3 ANGELES CHILDREN'S MATTEL;
4 SUMMERLIN HOSPITAL MEDICAL CENTER
5 LC; that treated and/or received any compensation
6 of Derek Bryce Johnson from December 15, 2008
7 thru December 6, 2011 at 6:35 PM PST, Death,

8 Defendants.

9 **DEFENDANTS THEODORE MOORE, BERKLEY BROWN d/b/a UCLA DEPT. OF**
10 **PEDIATRICS GRP PRACTICE AND THE REGENTS OF THE UNIVERSITY OF**
11 **CALIFORNIA, UCLA LOS ANGELES CHILDREN'S MATTELS' MOTION TO**
12 **CONTINUE DISCOVERY DEADLINES**

13 (FIRST REQUEST)

14 COME NOW, Defendants THEODORE MOORE, BERKLEY BROWN d/b/a
15 UCLA DEPT. OF PEDIATRICS GRP PRACTICE AND THE REGENTS OF THE
16 UNIVERSITY OF CALIFORNIA, UCLA LOS ANGELES CHILDREN'S MATTEL
17 (hereinafter "MOVING DEFENDANTS"), by and through their attorneys of record the
18 law offices of Carroll, Kelly, Trotter, Franzen, McKenna & Peabody, and hereby file this
19 Motion to Continue Discovery Deadlines (first request) pursuant to LR 6-1, and LR 26-4.

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1 This is the first request made to continue discovery deadlines. There is no currently
2 pending trial date.

3 Dated this 05 day of February, 2014.

4
5 CARROLL, KELLY, TROTTER, FRANZEN,
McKENNA & PEABODY

6
7 By: 

8 ROBERT L. McKENNA III, ESQ.

9 Nevada Bar No.: 8853

10 KEVIN R. LAZAR, ESQ.

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14 Attorneys for Defendants

15 THEODORE MOORE, BERKLEY BROWN

16 d/b/a UCLA DEPT. OF PEDIATRICS GRP

17 PRACTICE AND THE REGENTS OF THE

18 UNIVERSITY OF CALIFORNIA, UCLA

19 LOS ANGELES CHILDREN'S MATTEL

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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

On April 16, 2013, Plaintiffs filed the Complaint in this matter, alleging various constitutional violations, which in actuality amount to allegations of medical malpractice and wrongful death against numerous Defendants, including DEFENDANTS THEODORE MOORE, BERKLEY BROWN d/b/a UCLA DEPT. OF PEDIATRICS GRP PRACTICE AND THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, and UCLA LOS ANGELES CHILDREN'S MATTEL'S (hereinafter "Moving Defendants").

As the Court is well aware, Moving Defendants are the only Defendants to have appeared in this matter at this time, by filing a Motion to Dismiss on October 14, 2013.

1 The Motion to Dismiss presents arguments that are dispositive of this matter. The Court
2 has not yet set a date for that Motion to Dismiss to be heard. The Plaintiffs have not
3 served a single Defendant with the Complaint.
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5 On November 19, 2013, the Court issued Notice Regarding Intention to Dismiss
6 (Plaintiff's Complaint) Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure
7 (Document 17). In that notice the Court stated that this action would be dismissed as to
8 all remaining Defendants (who were not served with the Complaint), unless on or before
9 December 19, 2013, the Plaintiffs filed proof of service on those parties, which service
10 must have taken place prior to the expiration of the 120-day limit set forth in Fed.R.Civ.P.
11 4(m), or good cause was shown why such service was not made in that period.
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13 On December 26, 2013, Plaintiff Christine Johnson filed an Emergency Brief
14 Regarding the Dismissal, asking the Court to allow Plaintiffs more time to serve the
15 remaining Defendants (Document 21). The Court granted Plaintiff's Request, finding that
16 good cause exists to support Plaintiff's request for an extension of time for Plaintiff to
17 effectuate service of process. (Document 22). It was therefore ordered that the deadline
18 for Plaintiff to effectuate service of process on the remaining Defendants would be March
19 31, 2014.
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21 Pursuant to LR 26-1(d), counsel for plaintiff shall initiate the scheduling of the
22 Fed. R. Civ. P. 26(f) meeting within thirty (30) days after the first defendant answers or
23 otherwise appears. UCLA Defendants filed a Motion to Dismiss on October 14, 2013.
24 The Docket Text for that document (ECF. Doc. 13) stated that the Discovery
25 Plan/Scheduling Order was due by November 28, 2013.
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1 Plaintiff never contacted counsel for UCLA Defendants to conduct the required
2 meeting. On November 26, 2013, the undersigned called the only contact number that is
3 known for Plaintiff. Nobody answered and counsel left a voice mail for Plaintiff.
4 Counsel again tried to reach Plaintiff on November 27, 2013, prior to individually filing
5 the proposed Discovery Plan and Scheduling Order. Again, nobody answered, and again
6 counsel left a voice mail for Plaintiff. In an effort to comply with the Court's Order, and
7 both Local Rules and Federal Rules of Civil Procedure, Moving Defendants unilaterally
8 submitted a proposed Discovery Plan and Scheduling Order on November 27, 2013. The
9 Court accepted and approved that Discovery Plan and Scheduling Order.
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12 To date, the Plaintiffs have conducted no discovery and have not even produced
13 an Initial Disclosure of Witnesses and Documents, as required pursuant to Fed. R. Civ. P.
14 26(a). Moving Defendant served Plaintiffs with their Initial Disclosure on January 08,
15 2014, providing all medical records in their possession related to the treatment of
16 decedent. Plaintiffs have provided no documents or other information to the Moving
17 Defendants.
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20 Based on the foregoing, it would be very difficult and unreasonable to maintain the
21 discovery deadlines as currently set forth. The Plaintiffs have until March 31, 2014, to
22 effectuate service of process on the remaining Defendants. The current initial expert
23 disclosure deadline is February 13, 2014, approximately one and one half months prior to
24 that service deadline. Discovery is currently scheduled to close on April 14, 2014, fifteen
25 days after the deadline for the remaining Defendants to be served. Further, Defendants
26 who have appeared have filed a Motion to Dismiss the Complaint, which could prove
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1 dispositive in this matter. That motion has not yet been heard, and has not yet been
2 scheduled for hearing. Additionally, Plaintiffs have not even served the Moving
3 Defendants with their initial disclosure of witnesses and exhibits as required pursuant to
4 Fed. R. Civ. P. 26(a).
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6 Because on the above reasons, the undersigned contacted Plaintiff Christine
7 Johnson on Friday, January 31, 2014, to discuss whether Plaintiff would stipulate to
8 continue the pending discovery deadlines. Please see Affidavit of Kevin Lazar, Esq.,
9 attached hereto as "**Exhibit A.**" The undersigned explained to Ms. Johnson that a
10 continuance was necessary because none of the other Defendants have been served in this
11 case, and the new deadline to do so is March 31, 2014, approximately two (2) weeks
12 before the close of discovery and two (2) weeks after the initial expert disclosure deadline.
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14 **Id.** Ms. Johnson agreed with the proposed continuance, and stated that she would agree to
15 continue the dates as requested. **Id.** The undersigned offered to prepare a proposed
16 stipulation and order to continue the discovery dates, to which Ms. Johnson agreed. **Id.**
17 The undersigned offered to send the proposed stipulation and order to Ms. Johnson via her
18 email, to which Ms. Johnson agreed. **Id.** In addition, the undersigned asked Ms. Johnson
19 whether she was planning on serving her initial disclosure of witnesses and documents,
20 and Ms. Johnson stated that she knew that she had to provide the disclosure, and that she
21 was working on copying and/or scanning documents to provide them to Moving
22 Defendants. **Id.**
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26 On Monday, February 03, 2014, the undersigned sent the proposed stipulation and
27 order to continue discovery to Ms. Johnson at her provided email address. Please see
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1 email to Christine Johnson, attached hereto as “**Exhibit B.**” The proposed stipulation and
2 order to continue discovery (first request) is attached hereto as “**Exhibit C.**”

3
4 On Tuesday, February 04, 2014, Ms. Johnson responded to the email, stating that
5 she is now refusing to sign the proposed stipulation and order to continue discovery,
6 because she did not like the wording of the proposed stipulation. Please see email from
7 Christine Johnson dated February 04, 2014, attached hereto as “**Exhibit D.**” Specifically,
8 she was unhappy with the fact that the proposed stipulation was broken down into sections
9 regarding: 1) discovery completed; 2) discovery that remains to be completed; and 3) the
10 reasons why discovery not completed timely (or why an extension is being requested). **Id.**
11 The email states that in the sections discussing discovery that has been completed, there is
12 only mention of actions performed by Moving Defendants, and that this gives a “negative
13 tone” to Plaintiffs, which she does not believe is necessary or appropriate. **Id.** Ms.
14 Johnson then states that Moving Defendants are only seeking the discovery continuance
15 “so that it is favorable for your clients” and that the proposed stipulation mentions several
16 times that one of the reasons the continuance is requested is because Moving Defendants
17 have a pending motion to dismiss. **Id.** Based on the same, Ms. Johnson stated that not
18 only will she not agree to the previously agreed upon continuance (agreed upon Friday,
19 January 31, 2014), but now she will oppose a request by Moving Defendants to continue
20 discovery. **Id.**

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22 In response to Plaintiff’s email, the undersigned sent an email to Plaintiff stating
23 that the Federal Rules of Civil Procedure require there to be a specific breakdown of what
24 discovery has been done, what discovery needs to be done, and reasons why discovery
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1 should be continued. Please see response email of the undersigned, dated February 04,
2 2014, attached hereto as "**Exhibit E.**" In addition, the undersigned informed Plaintiff that
3 a Motion to Continue Discovery Deadlines would be prepared and submitted instead of
4 the proposed stipulation and order to continue discovery deadlines, and that the
5 undersigned would make the Court aware of Plaintiff's refusal to agree to the same. **Id.**

7 Based on the foregoing, there is good cause to continue the discovery deadlines in
8 this matter, so as to allow all Defendants to be served with process and appear in this
9 action prior to the discovery deadlines passing. Further, a continuance would allow the
10 Court to hear Defendants' Motion to Dismiss prior to the initial expert disclosure
11 deadline. Lastly, the Plaintiffs have not conducted a single step in prosecuting their case,
12 and have not even served Moving Defendants with an initial disclosure as required by
13 Fed. R. Civ. P. 26(a). It is not possible for Moving Defendants to adequately defend this
14 matter when the Plaintiffs have not provided them with any medical records of decedent,
15 or any other information related to their claim other than that contained within the
16 Complaint.
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19 Further, it makes no sense for the parties to disclose expert witnesses when there
20 are currently **nineteen** (19) Defendants whom Plaintiff has named in this action who have
21 yet to be served. Plaintiff has been granted a continuance to serve those Defendants until
22 March 31, 2014. Currently, the initial expert disclosure deadline is set for February 13,
23 2014, or one and one-half months prior to the date on which Plaintiffs must serve the
24 remaining nineteen Defendants. The close of discovery is set for April 14, 2014, or two
25 (2) weeks after the date on which Plaintiffs must serve the remaining nineteen Defendants.
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Based on the foregoing, there are numerous important reasons to continue discovery in this case at this time.

II. ARGUMENT

LR 6-1 discusses requests for discovery continuances, and the information required to be provided to the Court when requesting said continuance. It states:

- (b) Every motion or stipulation to extend time shall inform the Court of any previous extensions granted and state the reasons for the extension requested. A request made after the expiration of the specified period shall not be granted unless the moving party, attorney, or other person demonstrates that the failure to act was the result of excusable neglect. Immediately below the title of such motion or stipulation there shall also be included a statement indicating whether it is the first, second, third, etc., requested extension...

LR 26-4 discusses extensions of scheduled deadlines. It states:

Applications to extend any date set by the discovery plan, scheduling order, or other order must, in addition to satisfying the requirements of LR 6-1, be supported by a showing of good cause for the extension. All motions or stipulations to extend a deadline set forth in a discovery plan shall be received by the Court no later than twenty-one (21) days before the expiration of the subject deadline. A request made after the expiration of the subject deadline shall not be granted unless the movant demonstrates that the failure to act was the result of excusable neglect. Any motion or stipulation to extend a deadline or to reopen discovery shall include:

- (a) A statement specifying the discovery completed;
- (b) A specific description of the discovery that remains to be completed;
- (c) The reasons why the deadline was not satisfied or the remaining discovery was not completed within the time limits set by the discovery plan; and,
- (d) A proposed schedule for completing all remaining discovery.

A. Statement Specifying the Discovery Completed:

The following discovery has been completed by the parties:

<u>Type of Discovery</u>	<u>Date Completed</u>
Defendants' Initial Disclosure	January 08, 2014

B. Discovery That Remains To Be Completed:

- a. Depositions of all percipient witnesses, including Plaintiffs;

- b. Depositions of decedent's treating medical providers;
- c. Defendants must subpoena and obtain all medical records of decedent, other than its own records;
- d. Initial expert and rebuttal disclosures;
- e. Depositions of any/all expert witnesses;
- f. Plaintiffs' initial disclosures;
- g. All written discovery.

C. The Reasons Why the Discovery Remaining was Not Completed Within the Time Limits Set by the Discovery Order:

Discovery remains open on this case, and no discovery deadlines have yet passed. The trial on this matter has not yet been scheduled. Discovery is currently set to close on April 14, 2014. The current initial disclosure deadline is February 13, 2014, and Rebuttal expert disclosures are due March 17, 2014.

As the Court is well aware, Defendants THEODORE MOORE, BERKLEY BROWN d/b/a UCLA DEPT. OF PEDIATRICS GRP PRACTICE AND THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, UCLA LOS ANGELES CHILDREN'S MATTEL, are the only Defendants to have appeared in this matter at this time. These Defendants have filed a Motion to Dismiss, presenting arguments that may be dispositive in this matter. The Court has not yet set a date for that Motion to Dismiss to be heard.

On November 19, 2013, the Court issued Notice Regarding Intention to Dismiss Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure (Document 17). In that notice the Court stated that this action would be dismissed as to all remaining Defendants (who were not served with the Complaint), unless on or before December 19, 2013, the Plaintiffs filed proof of service on those parties, which service must have taken place prior to the expiration of the 120-day limit set forth in Fed.R.Civ.P. 4(m), or good cause was

1 shown why such service was not made in that period.

2 On December 26, 2013, Plaintiff Christine Johnson filed an Emergency Brief
3 Regarding the Dismissal, asking the Court to allow Plaintiffs more time to serve the
4 remaining Defendants (Document 21). The Court granted Plaintiff's Request, finding that
5 good cause exists to support Plaintiff's request for an extension of time for Plaintiff to
6 effectuate service of process. (Document 22). It was therefore ordered that the deadline
7 for Plaintiff to effectuate service of process on the remaining Defendants would be March
8 31, 2014.
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11 Based on the foregoing, it would be very difficult and unreasonable to maintain the
12 discovery deadlines as currently set forth. The Plaintiffs have until March 31, 2014, to
13 effectuate service of process on the remaining Defendants. The current initial expert
14 disclosure deadline is February 13, 2014, approximately one and one half months prior to
15 that service deadline. Discovery is currently scheduled to close on April 14, 2014, fifteen
16 days after the deadline for the remaining Defendants to be served. Further, Defendants
17 who have appeared have filed a Motion to Dismiss the Complaint, which could prove
18 dispositive in this matter. That motion has not yet been heard, and has not yet been
19 scheduled for hearing. Additionally, Plaintiffs have not even served the Moving
20 Defendants with their initial disclosure of witnesses and exhibits as required pursuant to
21 Fed. R. Civ. P. 26(a).
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25 There is good cause to continue the discovery deadlines in this matter, so as to
26 allow all Defendants to be served with process and appear in this action prior to the
27 discovery deadlines passing. Further, a continuance would allow the Court to hear
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Defendants' Motion to Dismiss prior to the initial expert disclosure deadline. Lastly, the Plaintiffs have not conducted a single step in prosecuting their case, and have not even served Moving Defendants with an initial disclosure as required by Fed. R. Civ. P. 26(a). It is not possible for Moving Defendants to adequately defend this matter when the Plaintiffs have not provided them with any medical records of decedent, or any other information related to their claim other than that contained within the Complaint.

Further, it makes no sense for the parties to disclose expert witnesses when there are currently nineteen (19) Defendants whom Plaintiff has named in this action who have yet to be served. Plaintiff has been granted a continuance to serve those Defendants until March 31, 2014. Currently, the initial expert disclosure deadline is set for February 13, 2014, or one and one-half months prior to the date on which Plaintiffs must serve the remaining nineteen Defendants. The close of discovery is set for April 14, 2014, or two (2) weeks after the date on which Plaintiffs must serve the remaining nineteen Defendants. Based on the foregoing, there are numerous important reasons to continue discovery in this case at this time.

D. A Proposed Schedule for Completing all Remaining Discovery:

Moving Defendants hereby request that the current discovery dates be continued, including:

Amend parties/Initial expert disclosure date:	From 02/13/14, to 11/13/14
Rebuttal expert disclosure date:	From 03/17/14 to 12/15/14
Close of Discovery:	From 04/14/14 to 01/14/15
Dispositive Motion date:	From 05/14/14 to 02/16/15

Moving Defendants believe that these new proposed deadlines will allow the parties to conduct discovery and prepare this matter for trial, as well as allow the

1 remaining nineteen (19) defendants who have yet to be served appear and prepare this
2 case for trial.

3 **The current trial date:**

4 There is no currently pending trial date on this matter.

5 **E. Said request is not being made for purpose of unduly delaying discovery or**
6 **the trial, and any delay in seeking this continuance was due to excusable**
7 **neglect.**

8 The initial expert disclosure deadline in this matter is currently scheduled for
9 February 13, 2014. This Motion is being filed on February 05, 2014, which is less than
10 twenty-one (21) days before that deadline. The delay in filing this Motion is due to
11 excusable neglect, namely that Moving Defendants' counsel has been waiting for
12 Plaintiffs' initial disclosure of documents, for the remaining nineteen (19) defendants to
13 be served the Complaint, and for the Court to schedule and hear arguments on the Motion
14 to Dismiss, thereby hoping to preclude the need for the filing of this Motion. This Motion
15 is being submitted at this time in good faith, and to allow the parties (including the yet to
16 be served defendants) time to diligently and adequately conduct discovery prior to trial.
17 As discussed above, there is no currently pending trial date, and good cause exists to
18 continue all discovery deadlines at this time.
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III. CONCLUSION

Based on the foregoing, good cause exists to continue the currently scheduled discovery deadlines in this matter as set forth above.

Dated this 05 day of February, 2014.

CARROLL, KELLY, TROTTER, FRANZEN,
McKENNA & PEABODY

By: 
ROBERT L. McKENNA III, ESQ.

Nevada Bar No.: 8853

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Attorneys for Defendants

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d/b/a UCLA DEPT. OF PEDIATRICS GRP
PRACTICE AND THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA, UCLA
LOS ANGELES CHILDREN'S MATTTEL

ORDER

IT IS SO ORDERED this 6th day of February, 2014.


UNITED STATES MAGISTRATE JUDGE